

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GEICO CASUALTY COMPANY, a foreign
corporation,

Plaintiff,

v.

TONG VAN VAN aka TONG VAN, an
individual; and THOMAS PAINE, an individual,

Defendants.

Case No.: 3:22-cv-01494-AN

OPINION AND ORDER

Defendant Tong Van Van moves for leave to file an amended answer. For the reasons set forth herein, defendant's motion to amend is GRANTED.

BACKGROUND

This is an action involving the termination of an insurance policy agreement between defendant Van and plaintiff Geico Casualty Company. Defendant Paine brought a separate action against defendant Van in Multnomah County Circuit Court regarding an automobile collision. On October 5, 2022, plaintiff filed a complaint in this court seeking declaratory relief that it had no duty to defend or indemnify defendant Van for any damages awarded in the action pending in the Multnomah County Circuit Court. On December 5, 2022, defendant Van filed an answer to plaintiff's complaint. On February 22, 2023, defendant Van filed this Motion for Leave to File Amended Answer pursuant to Federal Rule of Civil Procedure 15(a)(2). Plaintiff did not consent to the amendment; however, plaintiff did not file a response to defendant's motion.

LEGAL STANDARD

Because defendant seeks to amend his answer more than twenty-one days after serving the original pleading, the amendment is permitted if plaintiff consents or with this court's leave. Fed. R. Civ. Pro. 15(a)(2). Generally, a court should grant leave to amend when justice so requires, in the absence of undue delay, bad faith, repeated failure to cure deficiencies by previous amendments, undue prejudice to

the opposing party, or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). A proposed amendment to counterclaims, is futile when it would not survive a motion to dismiss, even with further amendment. *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

DISCUSSION

Defendant's proposed amended pleading adds three new counterclaims and modifies one counterclaim. The first counterclaim is modified from a "Breach of Contract" claim to a "Breach of Policy" claim, and the three added counterclaims include breach of contract, negligent misrepresentation, and reformation of contract. There is no evidence of bad faith, undue delay, or previous amendments. On the face of the pleading, there is no evidence that the proposed amendment would be futile.

CONCLUSION

Accordingly, defendant Tong Van Van's motion for leave to file an amended answer is GRANTED (ECF 14). The amended answer must be filed within 14 days of this order.

IT IS SO ORDERED.

DATED this 13 day of March, 2023.



Honorable Adrienne Nelson
United States District Judge